

ARKANSAS SUPREME COURT

No. CR 08-1400

TOMMY HALL
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered March 5, 2009

PRO SE MOTION FOR BELATED
APPEAL AND FOR PERMISSION TO
AMEND MOTION [CIRCUIT COURT
OF MILLER COUNTY, CR 2004-164,
HON. JOE E. GRIFFIN, JUDGE]

MOTION FOR BELATED APPEAL
DENIED; MOTION FOR PERMISSION
TO AMEND MOOT.

PER CURIAM

In 2006, petitioner Tommy Hall entered a plea of guilty to possession with intent to deliver cocaine and was sentenced as a habitual offender to 420 months' imprisonment. The judgment was entered on November 22, 2006, and petitioner filed a pro se motion to withdraw the guilty plea on December 5, 2006. The trial court denied the motion in an order entered on August 15, 2007.¹

On December 7, 2007, petitioner untimely filed in the trial court a notice of appeal from the order.² Now before us are petitioner's pro se motion for belated appeal and motion for permission to amend the motion for belated appeal. Belated appeals in criminal cases are governed by Rule 2(e) of the Rules of Appellate Procedure—Criminal. The rule requires that a motion for belated appeal be filed in this court "within eighteen (18) months of the date of entry of judgment or entry of the

¹A second motion to withdraw the guilty plea was filed on September 27, 2007, and denied on October 26, 2007. Petitioner does not seek an appeal from that order.

²The notice of appeal was contained in petitioner's motion for belated appeal as an exhibit, but was not made part of the partial record tendered to this court.

order denying postconviction relief from which the appeal is taken.” The instant motion for belated appeal, filed in this court on December 2, 2008, was timely filed pursuant to the time limitation in Appellate Procedure Rule 2(e).

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (per curiam). However, along with that right goes the responsibility to timely file a notice of appeal within thirty days of the date the order was entered. If a petitioner fails to timely file a notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (per curiam). The burden lies with the petitioner to make a showing of good cause. *Id.*

In the motion for belated appeal, petitioner contends that the notice of appeal from the denial of the first motion to withdraw the guilty plea was untimely filed through no fault of his own. He argues that as a result of his administrative-segregation status, he had to rely on others to bring him information from the prison law library to perfect the appeal. He claims that he was given the incorrect information on filing the notice of appeal, causing the notice of appeal to be sent to the United States Eighth Circuit Court of Appeals. He further claims that the Eighth Circuit forwarded the notice to the United States District Court for the Western District of Arkansas, in Texarkana, Arkansas, and that court sent the notice to Fayetteville, Arkansas.

In spite of petitioner’s contention that he was given incorrect information to properly file the notice of appeal, the notice filed on December 7, 2007, listed the correct address for the Miller County Circuit Court clerk at the top of the document. All other pleadings sent by petitioner to be filed listed the correct address for the clerk. There is no indication that petitioner had incorrect

information for filing the notice of appeal in a timely manner.

The fact that petitioner is proceeding pro se does not constitute good cause for his failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (per curiam). Further, it was the sole responsibility of petitioner to perfect the appeal, and the blame for failing to do so cannot be placed on others. *Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (per curiam). In this matter, petitioner has shown no good cause for his failure to comply with proper procedure. *Garner v. State, supra*. As the motion for belated appeal is denied, the motion for permission to amend the motion for belated appeal is moot.³

Motion denied.

³Even if the motion for permission were to be considered, it fails to address the cause for petitioner's late filing of the notice of appeal.